

DECISION

11953 Transp
Mr. Golden
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196126

DATE: November 6, 1979

MATTER OF: Burrelle's Press Clipping Service

[Untimely Protest of Bid Rejection as Nonresponsive]
DLG 3292

DIGEST:

Protest filed after bid opening which questions labor surplus set-aside is untimely and not for consideration on merits under GAO bid protest procedures as it relates to alleged impropriety in solicitation which was apparent in solicitation prior to bid opening.

Burrelle's Press Clipping Service (Burrelle) protests the award of a contract under the General Services Administration (GSA) invitation for bids (IFB) No. WFC-E2-R-4327-8-16-79. The solicitation was a total labor surplus area set aside and Burrelle, the low bidder, was declared non-responsive because it was not in a labor surplus area. According to Burrelle, only the next lowest bidder was eligible for the award since the other five bidders were or would have been found ineligible for award on the grounds that the companies are not in the press clipping industry. Burrelle requests that either its bid be considered responsive or that bids be resolicited without the labor set-aside restrictions. AGC00017

We believe that it is clear from the protester's submission that the protest is untimely under our bid protest procedures, 4 C.F.R. 20.2(b)(1) (1979) and therefore not for consideration on the merits.

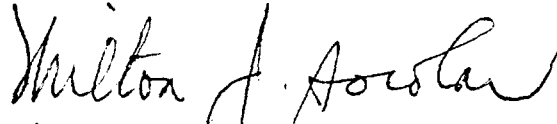
The Federal Procurement Regulations (FPR) 1-1.804-1 (1964 ed., Amend. 192) require under certain conditions, that procurements be set aside for labor surplus area concerns where there is a reasonable expectation that bids will be obtained from a sufficient number of responsible labor surplus area concerns so that awards will be made at reasonable prices. The

~~0077H~~

110790

fact that only one firm ultimately may have been eligible for award after bids are received does not preclude the agency from making an award to that firm, see CDI Marine Company, B-188905, November 15, 1977, 77-2 CPD 367, and the information furnished by the protester does not suggest that the award was made at an unreasonable price (the protester bid .41 per unit, the awardee .43). Thus as the protest only questions the labor surplus area restriction, it relates to an alleged impropriety in the solicitation which was apparent from the IFB prior to bid opening. Under our Bid Protest Procedures it should have been filed prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1978). See Triple "A" South, B-193765, March 23, 1979, 79-1 CPD 300; Triple "A" South, B-193721, May 9, 1979, 79-1 CPD 324.

The protest is dismissed.


Milton J. Socolar
General Counsel